IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 3577 (M/S) OF 2001

(Old No. 494/94)

Sri Roop Chandra Singh Rawat
Principal, Degree College,
Pauri Garhwal .....Petitioner

Versus

1. District Judge, Pauri Garhwal.
2. Prescribed Authority/Sub Divisional Magistrate, Pauri Garhwal.
3. Badri Nath and Kedar Nath Temple Committee through its Chief Executive Officer, Badri Nath, District Chamoli. .....Respondents

05.04.2006

Sri V.B.S. Negi, learned Counsel for the petitioner.
Sri S.N. Babulkar, Senior Learned Counsel for the respondent No.3.

Hon'ble Rajesh Tandon, J.

Heard Sri V.B.S. Negi, Learned Counsel for the petitioner and Sri S.N. Babulkar, Senior Learned Counsel on behalf of the respondent no.3.

By the present writ petition, the petitioner has prayed for quashing the order dated 07.9.92 passed by the Prescribed Authority and the order dated 09.12.1993 passed by the District Judge, Pauri Garhwal.

Briefly stated according to the case of the petitioner, petitioner is a tenant in the disputed house which is situate within the Municipal limits. The respondent No.3 Badri Nath/Kedar Nath Mandir Committee has sent a notice for termination of the tenancy of the petitioner u/s 106 of Transfer of Property Act, stating therein that the petitioner is using the residential house for the business purpose i.e fixed a printing machine in the said premises. The petitioner after receiving the notice, replied that the machine was installed in a very small protion and not in any room of the building.

The respondent No.3 has filed the application under the provisions of U.P. Public Premises (Eviction of Unauthorised Occupants) Act, 1972. The petitioner received the said notice.

Petitioner has replied and various objections were raised that Prescribed Authority under U.P. Act No. 22 of 1972 has no jurisdiction to decide the dispute and respondent No.3 is not a Corporation or Company as such the said provision is not applicable.

Prescribed Authority has rejected all the objections of the petitioner and passed an order for eviction of the petitioner on 07.09.1992. Aggrieved by the judgment of Prescribed Authority, the petitioner preferred an appeal before the District Judge, Pauri Garhwal but District Judge, Pauri has dismissed the appeal of the petitioner on 09.12.1993.

The Learned Counsel of the respondents has filed the Counter affidavit stating therein that under Section 7 of the Uttar Pradesh Sri Badri Nath and Sri Kedar Nath Temples Act, 1936 subsequently amended in the year 1964, it has been specifically mentioned that the "Committee shall be a body corporate" and as such, the provision of Uttar Pradesh Act No.22 of 1972 are fully applicable to it. Section 7 is quoted below:

*"7. **Incorporation** – The committee shall be called the Shri Badrinath [and Shri Kedarnath Temples] Committee. It shall be a body corporate and shall have perpetual succession and a common seal and may be the said name sue and be sued".*

Petitioner has further submitted that the premises belonging to Respondent No.3, was being occupied by one Mahangi Ram. The respondent No.3 after terminating the tenancy of Mehangi Ram also started proceedings under U.P. Act No.22 of 1972.

Section 2 (b) of the Act defines the premises as under:

2(b) "Premises" means any land (including any forest land or trees standing thereon, or covered by water, or a road maintained by the State Government or land appurtenant to such road) or any building or part of a building and includes –

(i) the garden grounds and out houses, if any, appurtaining to such building or part of a buildings, and

(ii) any fittings or fixtures offixed to or any furniture supplied with such building or part of a building for the more beneficial enjoyment thereof.

But does not include land which for the time being is held by a tenure holder under any relating to land tenure.

Section 2 (e) of the defines the public premises as under : -

"2(e) "Public premises" means by premises belonging to or taken on lease or requisitioned by or on behalf of the State Government, and includes any premises belonging to or taken on lease by or on behalf of-

(i) any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty one percent of the paid up share capital is held by the State Government; or

(ii) any local authority; or

(iii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by State Government; or

(iv) any society registered under the Societies Registration Act, 1860, the governing body whereof consists, under the rules or regulations of the society, wholly of public officer, or nominees of the State Government, or both;"

Sri S.N. Babulkar, Senior Advocate has contested the case on the ground that Section 2(b) & 2(e) fully covers the case of the petitioner.

Sri V.B.S. Negi has also referred the judgment of writ petition No.12634 of 1989 Mahangi Ram Vs. The Badri Nath and Kedar Nath Temples Committee, Badri Nath & others judgment of Allahabad High Court decided on 24.07.1996 is quoted below:-

"In my opinion this contention is correct. Section "2(e) of the Act defines the public premises as under :-

"Public premises" means by premises belonging to or taken on lease or requisitioned by or on behalf of the State Government, and

includes any premises belonging to or taken on lease by or on behalf of-

(i) any company as defined in Section 3 of the Companies Act, 1956 in which not less than fifty one percent of the paid up share capital is held by the State Government; or

(ii) any local authority; or

(iii) any Corporation (not being a company as defined in Section 3 of the Companies Act, 1956 or a local authority) owned or controlled by State Government; or

(iv) any society registered under the Societies Registration Act, 1860 the governing body whereof consists, under the rules or regulations of the society, wholly of public officer, or nominees of the State Government, or both; and also includes –

(i) Nazul land or any other premises entrusted to the management of a local authority (including any building built with Government funds on land belonging to the State Government, after the entrustment of the land to that local authority, not being land vested in or entrusted to the management of a Gaon Sabha or any other authority under any law relating to land tenures)

(ii) any premises required under the Land Acquisition Act, 1894 with the consent of the state Government for a company (as defined in that Act) and hold by that company under an agreement executed under section 41 of that act providing for reentry by the State Government in certain conditions);

The respondents claim that the premises in question is under the management of the Badri Nath, and Kedar nath Temple Committee. In this connection reference is to be made to section 4 of the U.P. Badri Nath and Kedar Nath Temple Act 1989, which states that the ownership of the temple fund shall vest in the delay of Badri Nath and the committee shall be entitled to possession. There is nothing to show that the premises in dispute are public premises as defined in the Act. The said premises does not belong to the State Government nor was taken on lease or requisition by the State Government or on his behalf. The other clauses of section 2(e) of the Act also do not apply in this case.

The Dharmashala is not a public premises and hence the Act, under which the impugned orders were passed does not apply. Hence the impugned orders are wholly without jurisdiction and are hereby quashed. The petition is allowed. No order as to costs."

The said judgment came to before Division Bench in Special Appeal No.623 of 1996 and same was confirmed. Order is quoted below :-

"Heard Sri Faujdar Rai for applicant, Sri B. Sahai for respondent no.1 and learned standing counsel for the respondents no. 2 & 3.

Sri B. Sahai, learned counsel for respondent no.1 raised preliminary objection against maintainability of this appeal, on the ground that the writ petition was filed against the appellate judgment passed by the District Judge in a proceeding under the U.P. Public Premises (Eviction of Unauthorised Occupant) Ant, 1972 and under Provisions of Rule 5 Chapter VIII of the Rules of Court, no appeal lies against the judgment of learned single Judge.

On consideration of the question, we are satisfied that there is substance in the objection raised by the learned counsel for respondent no.1. We, therefore, dismiss the special appeal as not maintainable."

In view of the aforesaid facts & circumstances, the matter being fully covered by Special Appeal No.623 of 1996.

In view of the above, a writ of certiorari is issued quashing the orders dated 07.09.2002 & 09.12.1993.

Consequently, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

05.04.2006
Jain